

**FILED**

**JAN 29 2020**

Clerk, U S District Court  
District Of Montana  
Billings

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

Sherman P. Hawkins,

Petitioner,

vs.

Montana Department of Corrections,

Respondents.

CV 19-125-BLG-SPW

ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on January 6, 2020. (Doc. 6.) The Magistrate recommended denying Petitioner Sherman Hawkins's petition for writ of habeas corpus and denying his motion for a preliminary injunction. (Doc. 6 at 9.)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. Under Fed. R. Civ. P. 6(d), an additional three days are added when a party is served via mail, for a total of 17 days. Here, no objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and

Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error.

Hawkins has failed to establish a federal constitutional violation for his conditions of parole. Mont. Code Ann. § 46-23-1020(3) did not extend his incarceration or affect his ability to be paroled, so it does not amount to an ex post facto violation. Hawkins’s motion for a preliminary injunction exceeds the scope of relief available under federal habeas review. Finally, Hawkins has not made a substantial showing of a denial of his constitutional rights, and reasonable jurists would find no basis to encourage further proceedings; therefore, a Certificate of Appealability will be denied. *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 6) are ADOPTED IN FULL.

IT IS FURTHER ORDERED:

1. Hawkins’s Petition (Doc. 1) is DENIED for lack of merit.

2. Hawkins's Motion for Preliminary Injunction (Doc. 5) is DENIED.
3. The Clerk of Court shall enter judgment in favor of Respondents.
4. A Certificate of Appealability is DENIED.

DATED this 28<sup>th</sup> day of January, 2020.



SUSAN P. WATTERS  
United States District Judge